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U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY: \_\_\_\_\_

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FRESENIUS MEDICAL CARE NORTH AMERICA, INC., FRESENIUS USA,  
INC., FRESENIUS USA MANUFACTURING, INC., and FRESENIUS USA  
MARKETING, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

JEFF JENKINS, and MARY ELEANOR  
JENKINS, individually and on behalf of  
the Estate of BILLY JOE JENKINS;  
MARILYN BAUMGARDEN,  
individually and on behalf of the Estate  
of DONALD EUGENE  
KAMPHEFNER; SUZETTE ABBOTT,  
individually and on behalf of the Estate  
of JOSEPH KIDA; DIANE  
WILKERSON, individually and on  
behalf of the Estate of ALMA LOWE;  
MARLENE MANLEY, individually and  
on behalf of the Estate of JAY PETE  
MANLEY, JR.; SHALESE VAULX,  
individually and on behalf of the Estate  
of VERINDA ELIZABETH  
MATTHEWS; JOSEPH MCKINNEY,  
individually and on behalf of the Estate  
of LUETANGER MCKINNEY;  
HORTENSE MILLER, individually and  
on behalf of the Estate of NAPOLEON  
MILLER;

Case No. **CV14-02933-JFW(MRW)**

**NOTICE OF REMOVAL UNDER 28  
U.S.C. § 1441(b) (DIVERSITY  
JURISDICTION)**

1 Plaintiffs,

2 vs

3 FRESENIUS MEDICAL CARE  
4 HOLDING, INC., FRESENIUS  
5 MEDICAL CARE HOLDINGS, INC.  
6 d/b/a FRESENIUS MEDICAL CARE  
7 NORTH AMERICA, INC., FRESENIUS  
8 USA, INC., FRESENIUS USA  
9 MANUFACTURING, INC.,  
10 FRESENIUS USA MARKETING, INC.,  
11 FRESENIUS USA SALES, INC.,  
12 WALTER L. WEISMAN, and DOES 1-  
13 50, Inclusive,

14 Defendants.

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## NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants Fresenius Medical Care Holdings, Inc. (improperly named in the Complaint as “Fresenius Medical Care Holding, Inc.”), Fresenius USA, Inc., Fresenius USA Manufacturing, Inc., and Fresenius USA Marketing, Inc. (collectively “the Fresenius Defendants”)<sup>1</sup> hereby remove this civil action from the Superior Court of California for the County of Los Angeles, where it is currently pending as Case No. BC40725, to the United States District Court for the Central District of California, Western Division. This Court has jurisdiction under Section 1332 because the amount-in-controversy requirement is satisfied and the parties are diverse in citizenship. Removal is not barred by Section 1441(b)(2)—the “forum defendant rule”—because the only California defendant, Walter Weisman, is not properly joined.

## BACKGROUND

1. This case is one of over 1,500 similar product liability actions filed against Fresenius entities alleging injuries sustained as a result of the use of NaturaLyte and/or GranuFlo—products used in hemodialysis treatment. Almost all of those cases are now pending in the multidistrict-litigation proceeding styled *In re Fresenius/NaturaLyte Dialysate Prods. Liab. Litig.*, No. 1:13-md-02428-DPW (D. Mass.) (the “MDL”).

2. As shown in the Notice of Pendency of Other Actions or Proceedings (filed herewith), the MDL now includes more than 30 cases transferred from California district courts. Of those 30 California cases, approximately 20 were removed from state courts based on diversity jurisdiction and then transferred to the MDL. Because the allegations in this case are the same as, or similar to, the allegations in the hundreds of cases pending in the MDL, the Fresenius Defendants

1 will identify this case to the JPML as a potential tag-along case that should be  
2 transferred to the MDL.

3 3. In this District, NaturaLyte/GranuFlo actions typically have been  
4 assigned (or re-assigned pursuant to General Order 08-05) to Judge Bernal.

5 4. Plaintiffs commenced this NaturaLyte/GranuFlo action on March 27,  
6 2014, by filing a Complaint in the Superior Court of California for the County of  
7 Los Angeles. Plaintiffs served a copy of the summons and Complaint on Fresenius  
8 Medical Care Holdings, Inc. d/b/a Fresenius Medical Care North America on April  
9 3, 2014. The other defendants have not been served.

10 5. Plaintiffs allege that the Decedents sustained injuries after receiving  
11 dialysis treatments using NaturaLyte and/or GranuFlo. [Ex. A<sup>2</sup>, Compl. ¶¶ 7-30.]  
12 Plaintiffs assert claims against the Fresenius Defendants and Walter Weisman for  
13 negligence, strict products liability, breach of express and implied warranty,  
14 fraudulent representation, negligent misrepresentation, wrongful death, and  
15 survival. [Ex. A, Compl. ¶¶ 130-190.] Plaintiffs seek to recover for compensatory  
16 damages, costs and expenses associated with Decedents' deaths, past and future  
17 medical expenses, past and future lost wages and loss of earning capacity, past and  
18 future emotional distress, loss of enjoyment of life, consequential damages,  
19 restitution, injunctive relief, punitive damages, attorneys' fees, costs, interest, and  
20 other relief. [*Id.* pp. 33-34.]

## 21 **GROUND FOR REMOVAL**

22 6. As shown in more detail below, this Court has subject matter  
23 jurisdiction under 28 U.S.C. § 1332, which confers original jurisdiction of "all civil  
24 actions where the matter in controversy exceeds the sum or value of \$75,000,  
25

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26 <sup>1</sup> The Complaint also names Fresenius USA Sales, Inc. as a defendant.  
27 Fresenius USA Sales, Inc. was dissolved in March 2010.

28 <sup>2</sup> All citations to "Exhibits" are citations to the exhibits to the Declaration of  
Tamara Fraizer in Support of Notice of Removal, filed herewith.

1 exclusive of interest and costs, and is between . . . citizens of different States.”

2 Removal is not barred by the forum-defendant rule set forth in 28 U.S.C.

3 § 1441(b)(2) because the only California defendant, Mr. Weisman, has been  
4 fraudulently joined.

5 **I. THE AMOUNT-IN-CONTROVERSY REQUIREMENT IS**  
6 **SATISFIED.**

7 7. The amount in controversy exceeds \$75,000, exclusive of interest and  
8 costs. Plaintiffs seek to recover for compensatory damages, costs and expenses  
9 associated with Decedents’ death, past and future medical expenses, past and  
10 future lost wages and loss of earning capacity, past and future emotional distress,  
11 loss of enjoyment of life, consequential damages, restitution, injunctive relief,  
12 punitive damages, attorneys’ fees, costs, interest, and other relief. [Ex. A, Compl.  
13 pp. 33-34.] The Complaint does not state a specific amount demanded. *See* Cal.  
14 Code Civ. Proc. § 425.10 (stating that “the amount demanded shall not be stated”  
15 for an action “brought to recover actual or punitive damages for personal injury or  
16 wrongful death”).

17 8. Where, as here, the complaint does not specify the amount of damages  
18 plaintiffs seek, the court must determine whether it is “facially apparent from the  
19 complaint that the jurisdictional amount is in controversy.” *Singer v. State Farm*  
20 *Mut. Auto Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997) (internal quotations omitted);  
21 *accord Titans Trading Corp. v. JTS Express*, No. CV 09-00714 MMM (RCX),  
22 2009 WL 537515, at \*5 (C.D. Cal. Mar. 3, 2009). “If not, the court may consider  
23 facts in the removal petition, and may ‘require parties to submit summary-  
24 judgment-type evidence relevant to the amount in controversy at the time of  
25 removal.” *Singer*, 116 F.3d at 1335-36.

26 9. Here, Plaintiffs are seeking to recover for personal injuries and  
27 wrongful death. [Ex. A, Compl. ¶¶ 130-190.] In such cases, it is facially apparent



1 that the amount in controversy exceeds \$75,000. *See, e.g., Kammerdiener v. Ford*  
2 *Motor Co.*, No. CV 09–2180, 2010 WL 682297, at \*2 (C.D. Cal. Feb. 24, 2010)  
3 (“That Plaintiffs are seeking recovery for wrongful death is sufficient to establish  
4 that the amount in controversy exceeds \$75,000 on the face of the Complaint.”);  
5 *see also Corbelle v. Sanyo Elec. Trading Co.*, No. C-03-1509 EMC, 2003 WL  
6 22682464, at \*3 (N.D. Cal. Nov. 4, 2003) (“This is not a case where the complaint  
7 alleges wrongful death or permanent disability or other such facts that would  
8 clearly establish an amount in controversy in excess of \$75,000.”).

9 10. Furthermore, Plaintiffs are seeking punitive damages, which are to be  
10 included in calculating the amount in controversy. *Gibson v. Chrysler Corp.*, 261  
11 F.3d 927, 945 (9th Cir. 2001) (“It is well established that punitive damages are part  
12 of the amount in controversy in a civil action.”); *accord Romo v. FFG Ins. Co.*,  
13 397 F. Supp. 2d 1237, 1240 (C.D. Cal. 2005) (“In an amount in controversy  
14 inquiry for diversity purposes, punitive damages, where authorized, are counted  
15 toward the requirement.”).

16 11. Thus, because it is “facially apparent” from the Complaint that  
17 Plaintiffs seek more than \$75,000, the amount-in-controversy requirement is  
18 satisfied.

## 19 **II. THE PARTIES ARE DIVERSE.**

20 12. Plaintiffs Jeff Jenkins and Mary Eleanor Jenkins are citizens of  
21 Colorado, as was Decedent Billy Joe Jenkins. [Ex. A, Compl. ¶¶ 7-8.]

22 13. Plaintiff Marilyn Baumgarden is, and Decedent Donald Eugene  
23 Kamphefner was, a citizen of Missouri. [*Id.* at ¶¶ 10-11.]

24 14. Plaintiff Suzette Abbot is a citizen of Georgia, and Decedent Joseph  
25 Kida was a citizen of Michigan. [*Id.* at ¶¶ 13-14.]

26 15. Plaintiff Diane Wilkerson is, and Decedent Alma Lowe was, a citizen  
27 of Virginia. [*Id.* at ¶¶ 16-17.]

16. Plaintiff Marlene Manley is, and Decedent Jay Pete Manley Jr. was, a citizen of Ohio. [*Id.* at ¶¶ 19-20.]

17. Plaintiff Shalese Vaulx is, and Decedent Verinda Elizabeth Matthews was, a citizen of Minnesota. [*Id.* at ¶¶ 22-23.]

18. Plaintiff Joseph McKinney is, and Decedent Luetanger McKinney was, a citizen of Alabama. [*Id.* at ¶¶ 25-26.]

19. Plaintiff Hortense Miller is, and Decedent Napoleon Miller was, a citizen of Michigan. [*Id.* at ¶¶ 28-29.]

20. Fresenius Medical Care Holdings, Inc. d/b/a Fresenius Medical Care North America is a corporation organized under the laws of New York with its principal place of business in Massachusetts. [Ex. A, Compl. ¶ 32.] Fresenius Medical Care Holdings, Inc. is therefore a citizen of New York and Massachusetts for purposes of diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1). Fresenius Medical Care Holdings, Inc. is not now, and was not at the time of the filing of the Complaint and all intervening times, a citizen of Colorado, Missouri, Georgia, Michigan, Virginia, Ohio, Minnesota, or Alabama.

21. Fresenius USA, Inc. is a corporation organized under the laws of Massachusetts with its principal place of business in Massachusetts. [Ex. A, Compl. ¶ 33.] Fresenius USA, Inc. is therefore a citizen of Massachusetts for purposes of diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1). Fresenius USA, Inc. is not now, and was not at the time of the filing of the Complaint and all intervening times, a citizen of Colorado, Missouri, Georgia, Michigan, Virginia, Ohio, Minnesota, or Alabama.

22. Fresenius USA Manufacturing, Inc. is a corporation organized under the laws of Delaware with its principal place of business in Massachusetts. [Ex. A, Compl. ¶ 34.] Fresenius USA Manufacturing, Inc. is therefore a citizen of Delaware and Massachusetts for purposes of diversity jurisdiction. *See* 28 U.S.C.

1 § 1332(c)(1). Fresenius USA Manufacturing, Inc. is not now, and was not at the  
2 time of the filing of the Complaint and all intervening times, a citizen of Colorado,  
3 Missouri, Georgia, Michigan, Virginia, Ohio, Minnesota, or Alabama.

4 23. Fresenius USA Marketing, Inc. is a corporation organized under the  
5 laws of Delaware with its principal place of business in Massachusetts. [Ex. A,  
6 Compl. ¶ 35.] Fresenius USA Marketing, Inc. is therefore a citizen of Delaware  
7 and Massachusetts for purposes of diversity jurisdiction. *See* 28 U.S.C.

8 § 1332(c)(1). Fresenius USA Marketing, Inc. is not now, and was not at the time  
9 of the filing of the Complaint and all intervening times, a citizen of Colorado,  
10 Missouri, Georgia, Michigan, Virginia, Ohio, Minnesota, or Alabama.

11 24. Defendant Walter Weisman is a citizen of California [*Id.* at ¶ 38], not  
12 Colorado, Missouri, Georgia, Michigan, Virginia, Ohio, Minnesota, or Alabama.

13 25. The Complaint also names Doe Defendants who are unnamed  
14 defendants that are allegedly “responsible in some manner for the events and  
15 happenings.” [Ex. A, Compl. ¶ 41.] Under 28 U.S.C. § 1441(b)(1), “the  
16 citizenship of defendants sued under fictitious names shall be disregarded.” Thus,  
17 the citizenship of the Doe Defendants is not considered in determining diversity.  
18 *See Olive v. Gen. Nutrition Ctrs., Inc.*, No. 2:12-cv-04297-ODW, 2012 WL  
19 2006389, at \*1 (C.D. Cal. June 5, 2012); *Marsikyan v. Porsche Cars N. Am., Inc.*,  
20 No. CV 11-09411 SJO, 2012 WL 280585, at \*2 (C.D. Cal. Jan. 30, 2012).

21 26. Accordingly, there is complete diversity of citizenship between  
22 Plaintiff and all the Defendants.

1 **III. IN ANY EVENT, MR. WEISMAN'S CITIZENSHIP SHOULD NOT**  
2 **BE CONSIDERED BECAUSE HE HAS BEEN FRAUDULENTLY**  
3 **JOINED.**

4 27. The Court need not consider Mr. Weisman's California citizenship  
5 because he has been fraudulently joined as a defendant.<sup>3</sup>

6 28. The Ninth Circuit has held that fraudulent joinder occurs where "the  
7 plaintiff fails to state a cause of action against a resident defendant, and the failure  
8 is obvious according to the settled rules of the state." *Morris v. Princess Cruises,*  
9 *Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001) (quotations omitted).

10 29. Here, Plaintiffs have failed to allege sufficient facts to state a cause of  
11 action against Mr. Weisman. This is a product liability action relating to  
12 "NaturaLyte Liquid Acid Concentrate (hereafter 'NaturaLyte') and/or GranuFlo  
13 Acid Concentrate (hereafter 'GranuFlo') used during hemodialysis treatment."  
14 [Ex. A, Compl. ¶ 1.]

15 30. The individual allegations against Mr. Weisman are limited to three  
16 paragraphs, which state:

17 Walter L. Weisman (hereinafter also referred to as "Weisman") is, and  
18 at all times relevant was, a resident of the County of Los Angeles,  
19 State of California. Mr. Weisman is, and at all times relevant was, a  
20 member of the Supervisory Board for Fresenius Medical Care in Los  
21 Angeles, California and has held that position since 1996. Mr.  
22 Weisman is also a Member of the Supervisory Board at Management  
23 AG - General Partner of Fresenius Medical Care, is the Chairman of  
24 the Audit and Corporate Governance Committee of Fresenius Medical  
25 Care, a member of the Joint Committee of Fresenius Medical Care  
26 and a member of the Nomination Committee of Fresenius Medical  
27 Care. At all times relevant, the Supervisory Board, Audit and  
28 Governance Committee and Joint Committee, which Mr. Weisman  
was a member of, managed, supervised and controlled all the North  
American Fresenius business entities.<sup>4</sup>

3 The MDL court (Judge Woodlock) is considering this same issue in  
connection with an omnibus motion to remand filed in several California cases in  
the MDL proceeding. The parties conducted discovery on this issue, and Judge  
Woodlock held a hearing on February 3, 2014. His ruling on this issue is expected  
soon.

4 Paragraph 38 is misleadingly incorrect in many respects. Most  
particularly, the company for which Mr. Weisman serves as a member of the  
Supervisory Board is Fresenius Medical Care AG & Co. KGaA, a German indirect

At all times relevant, Mr. Weisman, had oversight, management and knowledge of the defective nature of GranuFlo® and NaturaLyte®, but deliberately and/or negligently failed to advise the public, health care providers, including Plaintiffs and Plaintiffs' treating physicians, of these defects, despite having the duty to do so, as well as having the ability to effectuate the decision to implement GranuFlo and NaturaLyte without providing the appropriate warnings. Mr. Weisman knowingly and intentionally suppressed material facts and deliberately obfuscated the instructions and warnings of GranuFlo and NaturaLyte for the purpose, in part, of increasing sales and profits.

Defendant Weisman's compensation as an officer, director and committee member of Fresenius Medical Care are commensurate with the sales and profitability of Fresenius, including the sales and profits from GranuFlo® and NaturaLyte®, and as a member of Fresenius's Board. Defendant Weisman holds and has been granted significant stock positions and options in Fresenius, based on its profitability, including the sales and profits of GranuFlo® and NaturaLyte®. Defendant Weisman held the same corporate governance positions during the time Defendants were operating under a Corporate Integrity Agreement, which related to the management of Fresenius Clinics.

[*Id.* ¶ 38-40.] The Complaint fails to provide any additional facts regarding Mr. Weisman's alleged liability. For example, the Complaint nowhere alleges that Mr. Weisman treated any of the Decedents or had a relationship with any of them. Likewise, the Complaint nowhere alleges that Mr. Weisman had any relationship with the medical facilities in which the Decedents were allegedly treated or with any of the named Fresenius Defendants in this case.

31. In sum, the Complaint contains no factual allegations that could support the legal conclusion that Mr. Weisman owed a duty to Plaintiffs or Decedents. Setting aside the "general and conclusory" allegations of misconduct,

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parent company of defendant Fresenius Medical Care Holdings, Inc. The Complaint tries to obscure the distinction between those two entities by using the confusingly shortened reference "Fresenius Medical Care in Los Angeles" to identify Mr. Weisman's affiliation. [Ex. A, Compl. ¶ 38.] Paragraph 38 would be more accurate if the full name, "Fresenius Medical Care AG & Co. KGaA," were substituted for "Fresenius Medical Care in Los Angeles." But this correction would be destructive of Plaintiffs' case against Mr. Weisman because the German company is not involved in the manufacture, development, promotion, or sale of GranuFlo or NaturaLyte. The statements in this paragraph represent nothing more

1 Plaintiffs have failed to state a claim against Mr. Weisman. *Fisher v. Paul Revere*  
2 *Ins. Group*, 55 Fed. App'x 412, 414 (9th Cir. 2002) (unpublished) (a non-diverse  
3 defendant was fraudulently joined where the plaintiff did not specifically allege  
4 facts that would support any of the elements of plaintiff's state law claim); *see also*  
5 *Mass. Eye & Ear Infirmary v. Eugene B. Casey Found.*, 417 F. Supp. 2d 192, 194  
6 (D. Mass. 2006) (ignoring fraudulently joined defendant's citizenship because  
7 defendant was only mentioned in two of the paragraphs in the complaint and there  
8 was no allegation about how defendant caused plaintiff any harm).

9 32. The Complaint's references to "Defendants" collectively are not  
10 sufficient to state causes of action against Mr. Weisman specifically. Federal  
11 courts, including those in California, have held that a plaintiff cannot defeat a  
12 fraudulent joinder argument by pointing to factual allegations attributing  
13 wrongdoing to all defendants collectively. *See, e.g., Shah v. Wyeth Pharms., Inc.*,  
14 No. CV 04-8652 DT MAN, 2005 WL 6731641, at \*3 (C.D. Cal. Jan. 18, 2005);  
15 *Bennett v. Allstate Ins. Co.*, 753 F. Supp. 299, 301 (N.D. Cal. 1990) (denying  
16 motion to remand because, *inter alia*, plaintiff's complaint made "no attempt" to  
17 "differentiate between the conduct" of the defendants); *see also Beavers v. DePuy*  
18 *Orthopaedics, Inc.*, No. 1:11 dp 20275, 2012 WL 1945603, at \*5 (N.D. Ohio May  
19 30, 2012); *Oshima v. Kia Motors Corp.*, No. 11-cv-03349-REB-MEH, 2012 WL  
20 1578397, at \*5-7 (D. Colo. May 4, 2012); *Cranston v. Mariner Healthcare Mgmt.*  
21 *Co.*, No. 3:03CV10-D-A, 2003 WL 21517999, at \*3-4 (N.D. Miss. June 18,  
22 2003); *In re Rezulin Prods. Liab. Litig.*, 168 F. Supp. 2d 136, 140 (S.D.N.Y. 2001);  
23 *Salisbury v. Purdue Pharma, L.P.*, 166 F. Supp. 2d 546, 550 (E.D. Ky. 2001);  
24 *Addison v. Allstate Ins. Co.*, 58 F. Supp. 2d 729, 732-33 (S.D. Miss. 1999).

25 33. For example, the court in *Shah* held that a non-diverse defendant was  
26  
27 than vague attempts to obscure the differences between the separate German and  
28 American corporate entities.



1 fraudulently joined because “allegations against ‘defendants’ collectively are  
2 insufficient to warrant remand, especially when Plaintiffs fail to allege any  
3 ‘particular or specific activity’” on the part of each of the non-diverse defendants.  
4 *Shah*, 2005 WL 6731641, at \*3. Here, “although [the] complaint commonly  
5 employs the generic term ‘defendants,’ the context and nature of the individual  
6 allegations make clear that only [the Fresenius entities] are targeted.” *Salisbury*,  
7 166 F. Supp. 2d at 550.

8 34. Moreover, Mr. Weisman previously submitted a declaration in a  
9 similar product liability action concerning GranuFlo and NaturaLyte, *Nunez v.*  
10 *Fresenius USA, Inc.*, Case No. 2:13-cv-02729-JGP-OP, Doc. No. 12-5 (C.D. Cal.  
11 June 17, 2013). That case asserts similar claims against the same Fresenius entities  
12 and Mr. Weisman. Mr. Weisman’s declaration states, among other things, that:

- 13 a. he is not an executive, officer, director, board member, or employee  
14 of any of the named Fresenius Defendants;
- 15 b. as a board member of Fresenius Medical Care AG & Co. KGaA (a  
16 German holding company), he has no oversight of the day-to-day  
17 affairs and operations of its operating indirect subsidiaries and no  
18 direct involvement with any U.S. subsidiaries;
- 19 c. he has never heard of an entity called “Fresenius Medical Care for Los  
20 Angeles, California” and is not an officer or director of any such  
21 entity; and
- 22 d. he had not heard of the existence of NaturaLyte or GranuFlo until  
23 after the alleged issues related to those products became public  
24 knowledge in June of 2012.

25 [See Ex. B (Decl. of Walter L. Weisman, *Nunez v. Fresenius USA, Inc.*, Case No.  
26 2:13-cv-02729-JGP-OP, Doc. No. 25-1 (C.D. Cal. June 17, 2013)) ¶¶ 2-10.]

27 35. Mr. Weisman submitted an additional declaration in the MDL  
28

1 proceeding, which also demonstrates that he is not an officer or director of any  
2 Fresenius entity named as a Defendant in this case and had no knowledge of  
3 NaturaLyte or GranuFlo before 2012. [See Ex. C ¶¶ 1-13.]

4 36. In sum, the Complaint fails to allege facts sufficient to state a cause of  
5 action against Mr. Weisman specifically, and his declarations establish that no  
6 potential basis for the alleged claims exists. Thus, Mr. Weisman has been  
7 fraudulently joined, and he is not a “properly joined” defendant whose presence in  
8 the case precludes removal under Section 1441(b)(2).

9 **IV. THE OTHER PREREQUISITES FOR REMOVAL ARE SATISFIED.**

10 37. This Notice of Removal is timely filed. The statute provides that  
11 “[e]ach defendant shall have 30 days after receipt . . . of the initial pleading . . . to  
12 file a notice of removal.” 28 U.S.C. § 1446(b)(2)(B). Fresenius Medical Care  
13 Holdings, Inc. was served on April 3, 2014. This Notice of Removal is timely filed  
14 within 30 days of service on this Defendant.

15 38. All properly joined and served defendants join in this removal. See 28  
16 U.S.C. § 1446(b)(2)(A). The joinder or consent of Mr. Weisman is not necessary  
17 because he has been fraudulently joined as a defendant, and also because he has  
18 not been served. See *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n.1 (9th  
19 Cir. 1988); *AGI Publishing, Inc. v. HR Staffing, Inc.*, No. 1:12-cv-00879, 2012 WL  
20 3260519, at \*2 (E.D. Cal. Aug. 8, 2012); *Simpson v. Union Pac. R. Co.*, 282 F.  
21 Supp. 2d 1151, 1158 (N.D. Cal. 2003), *Tsang v. Select Portfolio Serv., Inc.*, No.  
22 EDCV 12-00127 VAP, 2012 WL 10423187, at \*6 (C.D. Cal. Aug. 3, 2012).

23 39. This action is properly removed to the United States District Court for  
24 the Central District of California, which is “the district . . . embracing the place  
25 where [the] action is pending.” 28 U.S.C. § 1441(a); see also 28 U.S.C. § 84(d)  
26 (listing the counties within the Central District of California).

27 40. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and  
28



orders served upon the Fresenius Defendants, including the summons and Complaint, is attached hereto as Exhibit A.

41. Pursuant to 28 U.S.C. § 1446(d), a Notice of Filing Notice of Removal, attached hereto as Exhibit D, together with the Notice of Removal, will be served upon Plaintiffs' counsel and will be filed with the clerk of the Superior Court for the County of Los Angeles.

If any question arises as to the propriety of the removal of this action, the Fresenius Defendants respectfully request the opportunity to submit briefing and oral argument and to conduct discovery in support of its position that subject matter jurisdiction exists.

Dated: April 16, 2014

Respectfully Submitted,

/s/ Tamara Fraizer

Tamara Fraizer (SBN 215942)  
Fish & Richardson P.C.  
500 Arguello Street, Suite 500  
Redwood City, CA 94063  
Telephone: (650) 839-5070  
Facsimile: (650) 839-5071  
fraizer@fr.com

Counsel for Defendants  
FRESENIUS MEDICAL CARE  
HOLDINGS, INC.; FRESENIUS  
MEDICAL CARE NORTH AMERICA,  
INC.; FRESENIUS USA, INC.;  
FRESENIUS USA  
MANUFACTURING, INC.;  
FRESENIUS USA MARKETING, INC.

**PROOF OF SERVICE**

I am employed in the County of San Mateo. My business address is Fish & Richardson P.C., 500 Arguello Street, Suite 500, Redwood City, California 94063. I am over the age of 18 and not a party to the foregoing action.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for personal delivery, for mailing with United States Postal Service, for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight service.

On April 16, 2014, I served a copy of the foregoing document(s) on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope, and addressed as follows:

**Counsel for Plaintiff:**

Hector G. Gancedo (SBN 132139)  
GANCEDO LAW FIRM, INC.  
130 S. Euclid Avenue, Suite 2  
Pasadena, CA 91101  
Telephone: (626) 577-2500  
Fax: (626) 577-2555

Stephen C. Ball (SBN 119463)  
BALL & BONHOLTZER  
300 North Lake Avenue, Suite 1000  
Pasadena, CA 91101  
Telephone: (626) 793-2117  
Fax: (626) 793-3198

<input type="checkbox"/>	<b>MAIL:</b>	Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business.
<input type="checkbox"/>	<b>PERSONAL:</b>	Such envelope was delivered by hand to the offices of the addressee.
<input type="checkbox"/>	<b>FACSIMILE:</b>	Such document was faxed to the facsimile transmission machine with the facsimile machine number stated above. Upon completion of the transmission, the transmitting machine issued a transmission report showing the transmission was complete and without error.
<input type="checkbox"/>	<b>E-MAIL:</b>	Such document was transmitted by electronic mail to the addressees' email addresses as stated above.
<input checked="" type="checkbox"/>	<b>FEDERAL EXPRESS:</b>	Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by Federal Express.
<input type="checkbox"/>	<b>EXPRESS MAIL:</b>	Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by the United States Postal Service.

1 ☐ **OVERNIGHT  
DELIVERY:**

Such correspondence was given on the same day in the ordinary course of business to an authorized courier or a driver authorized by that courier to receive documents.

3 I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

4 I declare under penalty of perjury that the above is true and correct.  
5 Executed on April 16, 2014, at Redwood City, California.

7 /s/ Cecilia Acosta

8 Cecilia Acosta

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge John F. Walter and to  
Magistrate Judge Michael R. Wilner.

The case number on all documents filed with the Court should read as follows:

2:14-cv-02933-JFW(MRWx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the assigned Magistrate Judge has been designated to hear discovery-related motions. All discovery-related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

April 16, 2014

Date

By APEDRO

Deputy Clerk

---

ATTENTION

*A copy of this Notice must be served on all parties served with the Summons and Complaint (or, in cases removed from state court, on all parties served with the Notice of Removal) by the party who filed the Complaint (or Notice of Removal).*

#28

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

**I. (a) PLAINTIFFS** ( Check box if you are representing yourself ☐ )

Jeff Jenkins and Mary Eleanor Jenkins, individually and on behalf of the Estate of Billy Joe Jenkins, et al.  
 (See Attachment A for additional Plaintiffs)

**DEFENDANTS** ( Check box if you are representing yourself ☐ )

Fresenius Medical Care Holding, Inc., et al.  
 (See Attachment B for additional Defendants)

(b) County of Residence of First Listed Plaintiff Jefferson Co., AR

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant \_\_\_\_\_

(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

Hector G. Gancedo (SBN 132139)  
 GANCEDO LAW FIRM, INC.  
 130 S. Euclid Avenue, Suite 2  
 Pasadena, CA 91101 Tel: (626) 577-2500

Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

Tamara Fraizer  
 Fish & Richardson P.C.  
 500 Arguello Street, Suite 500  
 Redwood City, CA 94063 Tel: (650) 839-5070

**3Y FAX****II. BASIS OF JURISDICTION** (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff  
☐ 2. U.S. Government Defendant  
☐ 3. Federal Question (U.S. Government Not a Party)  
☒ 4. Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**—For Diversity Cases Only

(Place an X in one box for plaintiff and one for defendant)

- |   |                                       |                                |   |                                |                                       |
|---|---------------------------------------|--------------------------------|---|--------------------------------|---------------------------------------|
| Citizen of This State                   | PTF <input type="checkbox"/> 1        | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State     | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4        |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2     | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5     | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3     | Foreign Nation  | <input type="checkbox"/> 6     | <input type="checkbox"/> 6            |

**IV. ORIGIN** (Place an X in one box only.)

- ☐ 1. Original Proceeding  
☒ 2. Removed from State Court  
☐ 3. Remanded from Appellate Court  
☐ 4. Reinstated or Reopened  
☐ 5. Transferred from Another District (Specify) \_\_\_\_\_  
☐ 6. Multi-District Litigation

**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)**CLASS ACTION under F.R.Cv.P. 23:** ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT:** \$ > \$75,000**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Removal of product-liability suit pursuant to 28 USC Section 1332 (Diversity Jurisdiction), and 28 USC Sections 1367, 1441, and 1446

**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<b>Habeas Corpus:</b>	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	<b>TORTS</b>	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<b>BANKRUPTCY</b>	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<b>FOURTH PARTY ACTIONS</b>
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 441 Voting	<b>LABOR</b>	
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input checked="" type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision		<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
		<input type="checkbox"/> 369 Personal Injury Product Liability		<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

FOR OFFICE USE ONLY:

Case Number:

CV-71 (11/13)

CIVIL COVER SHEET

Page 1 of 3

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
#29  
CIVIL COVER SHEET

**VIII. VENUE:** Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court?	STATE CASE WAS PENDING IN THE COUNTY OF:	INITIAL DIVISION IN CAD D IS:
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	<input checked="" type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action?	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CAD D IS:
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	A PLAINTIFF?	A DEFENDANT?	
	Then check the box below for the county in which the majority of DEFENDANTS reside.	Then check the box below for the county in which the majority of PLAINTIFFS reside.	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
	<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western

Question C: Location of plaintiffs, defendants, and claims? (Make only one selection per row)	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<b>C.1. Is either of the following true? If so, check the one that applies:</b>  <input type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D  <p style="text-align: center;">Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below.</p> <p style="text-align: center;">If none applies, answer question C2 to the right. ➔</p>	<b>C.2. Is either of the following true? If so, check the one that applies:</b>  <input type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C  <p style="text-align: center;">Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below.</p> <p style="text-align: center;">If none applies, go to the box below. ↓</p>
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

Question D: Initial Division?	INITIAL DIVISION IN CAD D
Enter the initial division determined by Question A, B, or C above: ➔	Western

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
# 30  
CIVIL COVER SHEETIX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ NO ☒ YES

If yes, list case number(s): Please see Notice of Related Cases

## Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)
- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

## X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT): /s Tamara Fraizer

DATE: 4/16/2014

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

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Roger A. Denning (SBN 228998)  
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Olga I. May (SBN 232012)  
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Tamara Fraizer (SBN 215942)  
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Redwood City, CA 94063  
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Facsimile: (650) 839-5071

Attorneys for Defendants FRESENIUS MEDICAL CARE HOLDINGS, INC.,  
FRESENIUS MEDICAL CARE NORTH AMERICA, INC., FRESENIUS USA,  
INC., FRESENIUS USA MANUFACTURING, INC., and FRESENIUS USA  
MARKETING, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

JEFF JENKINS, and MARY ELEANOR  
JENKINS, individually and on behalf of  
the Estate of BILLY JOE JENKINS;  
MARILYN BAUMGARDEN,  
individually and on behalf of the Estate  
of DONALD EUGENE  
KAMPHEFNER; SUZETTE ABBOTT,  
individually and on behalf of the Estate  
of JOSEPH KIDA; DIANE  
WILKERSON, individually and on  
behalf of the Estate of ALMA LOWE;  
MARLENE MANLEY, individually and  
on behalf of the Estate of JAY PETE  
MANLEY, JR.; SHALESE VAULX,  
individually and on behalf of the Estate  
of VERINDA ELIZABETH  
MATTHEWS; JOSEPH MCKINNEY,  
individually and on behalf of the Estate  
of LUETANGER MCKINNEY;  
HORTENSE MILLER, individually and  
on behalf of the Estate of NAPOLEON  
MILLER;

Plaintiffs.

Case No. \_\_\_\_\_

**ATTACHMENT A TO CIVIL  
COVER SHEET (LIST OF  
PLAINTIFFS)**



1  
2 vs

3 FRESENIUS MEDICAL CARE  
4 HOLDING, INC., FRESENIUS  
5 MEDICAL CARE HOLDINGS, INC.  
6 d/b/a FRESENIUS MEDICAL CARE  
7 NORTH AMERICA, INC., FRESENIUS  
8 USA, INC., FRESENIUS USA  
9 MANUFACTURING, INC.,  
10 FRESENIUS USA MARKETING, INC.,  
11 FRESENIUS USA SALES, INC.,  
12 WALTER L. WEISMAN, and DOES 1-  
13 50, Inclusive,

14 Defendants.

15  
16 1. JEFF JENKINS, and MARY ELEANOR JENKINS, individually and  
17 on behalf of the Estate of BILLY JOE JENKINS;

18 2. MARILYN BAUMGARDEN, individually and on behalf of the  
19 Estate of DONALD EUGENE KAMPHEFNER;

20 3. SUZETTE ABBOTT, individually and on behalf of the Estate of  
21 JOSEPH KIDA;

22 4. DIANE WILKERSON, individually and on behalf of the Estate of  
23 ALMA LOWE;

24 5. MARLENE MANLEY, individually and on behalf of the Estate of  
25 JAY PETE MANLEY, JR.;

26 6. SHALESE VAULX, individually and on behalf of the Estate of  
27 VERINDA ELIZABETH MATTHEWS;

28 7. JOSEPH MCKINNEY, individually and on behalf of the Estate of  
LEUTANGER MCKINNEY;

8. HORTENSE MILLER, individually and on behalf of the Estate of  
NAPOLEON MILLER.

1 Dated: April 16, 2014

Respectfully Submitted,

3 /s/ Tamara Fraizer

4 Tamara Fraizer (SBN 215942)  
5 Fish & Richardson P.C.  
6 500 Arguello Street, Suite 500  
7 Redwood City, CA 94063  
8 Telephone: (650) 839-5070  
9 Facsimile: (650) 839-5071  
10 fraizer@fr.com

11 Counsel for Defendants  
12 FRESENIUS MEDICAL CARE  
13 HOLDINGS, INC.; FRESENIUS  
14 MEDICAL CARE NORTH AMERICA,  
15 INC.; FRESENIUS USA, INC.;  
16 FRESENIUS USA  
17 MANUFACTURING, INC.;  
18 FRESENIUS USA MARKETING, INC.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I am employed in the County of San Mateo. My business address is Fish & Richardson P.C., 500 Arguello Street, Suite 500, Redwood City, California 94063. I am over the age of 18 and not a party to the foregoing action.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for personal delivery, for mailing with United States Postal Service, for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight service.

On April 16, 2014, I served a copy of the foregoing document(s) on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope, and addressed as follows:

**Counsel for Plaintiff:**

Hector G. Gancedo (SBN 132139)  
GANCEDO LAW FIRM, INC.  
130 S. Euclid Avenue, Suite 2  
Pasadena, CA 91101  
Telephone: (626) 577-2500  
Fax: (626) 577-2555

Stephen C. Ball (SBN 119463)  
BALL & BONHOLTZER  
300 North Lake Avenue, Suite 1000  
Pasadena, CA 91101  
Telephone: (626) 793-2117  
Fax: (626) 793-3198

<input type="checkbox"/>	<b>MAIL:</b>	Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business.
<input type="checkbox"/>	<b>PERSONAL:</b>	Such envelope was delivered by hand to the offices of the addressee.
<input type="checkbox"/>	<b>FACSIMILE:</b>	Such document was faxed to the facsimile transmission machine with the facsimile machine number stated above. Upon completion of the transmission, the transmitting machine issued a transmission report showing the transmission was complete and without error.
<input type="checkbox"/>	<b>E-MAIL:</b>	Such document was transmitted by electronic mail to the addressees' email addresses as stated above.
<input checked="" type="checkbox"/>	<b>FEDERAL EXPRESS:</b>	Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by Federal Express.
<input type="checkbox"/>	<b>EXPRESS MAIL:</b>	Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by the United States Postal Service.

1 ☐ **OVERNIGHT**  
2 **DELIVERY:**

Such correspondence was given on the same day in the ordinary course of business to an authorized courier or a driver authorized by that courier to receive documents.

3 I declare that I am employed in the office of a member of the bar of this  
4 Court at whose direction the service was made.

5 I declare under penalty of perjury that the above is true and correct.  
Executed on April 16, 2014, at Redwood City, California.

6  
7 /s/ Cecilia Acosta

Cecilia Acosta  
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Attorneys for Defendants FRESENIUS MEDICAL CARE HOLDINGS, INC.,  
FRESENIUS MEDICAL CARE NORTH AMERICA, INC., FRESENIUS USA,  
INC., FRESENIUS USA MANUFACTURING, INC., and FRESENIUS USA  
MARKETING, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

JEFF JENKINS, and MARY ELEANOR  
JENKINS, individually and on behalf of  
the Estate of BILLY JOE JENKINS;  
MARILYN BAUMGARDEN,  
individually and on behalf of the Estate  
of DONALD EUGENE  
KAMPHEFNER; SUZETTE ABBOTT,  
individually and on behalf of the Estate  
of JOSEPH KIDA; DIANE  
WILKERSON, individually and on  
behalf of the Estate of ALMA LOWE;  
MARLENE MANLEY, individually and  
on behalf of the Estate of JAY PETE  
MANLEY, JR.; SHALESE VAULX,  
individually and on behalf of the Estate  
of VERINDA ELIZABETH  
MATTHEWS; JOSEPH MCKINNEY,  
individually and on behalf of the Estate  
of LUETANGER MCKINNEY;  
HORTENSE MILLER, individually and  
on behalf of the Estate of NAPOLEON  
MILLER;

Plaintiffs,

Case No. \_\_\_\_\_  
**ATTACHMENT B TO CIVIL  
COVER SHEET (LIST OF  
DEFENDANTS)**

1 vs

2 FRESENIUS MEDICAL CARE  
3 HOLDING, INC., FRESENIUS  
4 MEDICAL CARE HOLDINGS, INC.  
5 d/b/a FRESENIUS MEDICAL CARE  
6 NORTH AMERICA, INC., FRESENIUS  
7 USA, INC., FRESENIUS USA  
8 MANUFACTURING, INC.,  
9 FRESENIUS USA MARKETING, INC.,  
10 FRESENIUS USA SALES, INC.,  
11 WALTER L. WEISMAN, and DOES 1-  
12 50, Inclusive,

13 Defendants.

14 1. Defendant Fresenius Medical Care Holdings, Inc. d/b/a Fresenius  
15 Medical Care North America (improperly named in the Complaint as “Fresenius  
16 Medical Care Holding, Inc.”) is a corporation organized under the laws of the State  
17 of New York and has its principal place of business in Waltham, Massachusetts.  
18 Fresenius Medical Care Holdings, Inc. is therefore a citizen of the State of New  
19 York and the State of Massachusetts for purposes of diversity jurisdiction. *See* 28  
20 U.S.C. § 1332(c)(1). Fresenius Medical Care Holdings, Inc. is not now, and was  
21 not at the time of the filing of the Complaint and all intervening times, a citizen of  
22 the State of Colorado, Missouri, Georgia, Michigan, Virginia, Ohio, Minnesota, or  
23 Alabama.<sup>1</sup>

24 2. Defendant Fresenius USA, Inc. is a corporation organized under the  
25 laws of the State of Massachusetts and has its principal place of business in  
26 Waltham, Massachusetts. Fresenius USA, Inc. is therefore a citizen of the State of  
27 Massachusetts for purposes of diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1).  
28 Fresenius USA, Inc. is not now, and was not at the time of the filing of the

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<sup>1</sup> The Complaint also names Fresenius USA Sales, Inc. as a defendant.  
Fresenius USA Sales, Inc. was dissolved in March 2010.

1 Complaint and all intervening times, a citizen of the State of Colorado, Missouri,  
2 Georgia, Michigan, Virginia, Ohio, Minnesota, or Alabama.

3 3. Defendant Fresenius USA Manufacturing, Inc. is a corporation  
4 organized under the laws of the State of Delaware and has its principal place of  
5 business in Waltham, Massachusetts. Fresenius USA Manufacturing, Inc. is  
6 therefore a citizen of the State of Delaware and the State of Massachusetts for  
7 purposes of diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1). Fresenius USA  
8 Manufacturing, Inc. is not now, and was not at the time of the filing of the  
9 Complaint and all intervening times, a citizen of the State of Colorado, Missouri,  
10 Georgia, Michigan, Virginia, Ohio, Minnesota, or Alabama.

11 4. Defendant Fresenius USA Marketing, Inc. is a corporation organized  
12 under the laws of the State of Delaware and has its principal place of business in  
13 Waltham, Massachusetts. Fresenius USA Marketing, Inc. is therefore a citizen of  
14 the State of Delaware and the State of Massachusetts for purposes of diversity  
15 jurisdiction. *See* 28 U.S.C. § 1332(c)(1). Fresenius USA Marketing, Inc. is not  
16 now, and was not at the time of the filing of the Complaint and all intervening  
17 times, a citizen of the State of Colorado, Missouri, Georgia, Michigan, Virginia,  
18 Ohio, Minnesota, or Alabama.

19 5. Before its dissolution on March 29, 2010, Fresenius USA Sales, Inc.  
20 was a corporation organized under the laws of the State of Massachusetts and had  
21 its principal place of business in Waltham, Massachusetts. Fresenius USA Sales,  
22 Inc. was therefore a citizen of the State Massachusetts for purposes of diversity  
23 jurisdiction. *See* 28 U.S.C. § 1332(c)(1). Fresenius USA Sales, Inc. is not now,  
24 and was not at the time of the filing of the Complaint and all intervening times, a  
25 citizen of the State of Colorado, Missouri, Georgia, Michigan, Virginia, Ohio,  
26 Minnesota, or Alabama.

1           6. Defendant Walter L. Weisman is alleged to reside in Los Angeles  
2 County, California.

3  
4 Dated: April 16, 2014

Respectfully Submitted,

5  
6 /s/ Tamara Fraizer

Tamara Fraizer (SBN 215942)  
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11 Counsel for Defendants  
FRESENIUS MEDICAL CARE  
HOLDINGS, INC.; FRESENIUS  
12 MEDICAL CARE NORTH AMERICA,  
INC.; FRESENIUS USA, INC.;  
13 FRESENIUS USA  
MANUFACTURING, INC.;  
14 FRESENIUS USA MARKETING, INC.  
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**PROOF OF SERVICE**

I am employed in the County of San Mateo. My business address is Fish & Richardson P.C., 500 Arguello Street, Suite 500, Redwood City, California 94063. I am over the age of 18 and not a party to the foregoing action.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for personal delivery, for mailing with United States Postal Service, for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight service.

On April 16, 2014, I served a copy of the foregoing document(s) on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope, and addressed as follows:

**Counsel for Plaintiff:**

Hector G. Gancedo (SBN 132139)  
GANCEDO LAW FIRM, INC.  
130 S. Euclid Avenue, Suite 2  
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Stephen C. Ball (SBN 119463)  
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Fax: (626) 793-3198

<input type="checkbox"/>	<b>MAIL:</b>	Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business.
<input type="checkbox"/>	<b>PERSONAL:</b>	Such envelope was delivered by hand to the offices of the addressee.
<input type="checkbox"/>	<b>FACSIMILE:</b>	Such document was faxed to the facsimile transmission machine with the facsimile machine number stated above. Upon completion of the transmission, the transmitting machine issued a transmission report showing the transmission was complete and without error.
<input type="checkbox"/>	<b>E-MAIL:</b>	Such document was transmitted by electronic mail to the addressees' email addresses as stated above.
<input checked="" type="checkbox"/>	<b>FEDERAL EXPRESS:</b>	Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by Federal Express.
<input type="checkbox"/>	<b>EXPRESS MAIL:</b>	Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by the United States Postal Service.

**OVERNIGHT  
DELIVERY:**

Such correspondence was given on the same day in the ordinary course of business to an authorized courier or a driver authorized by that courier to receive documents.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury that the above is true and correct.  
Executed on April 16, 2014, at Redwood City, California.

/s/ Cecilia Acosta

Cecilia Acosta